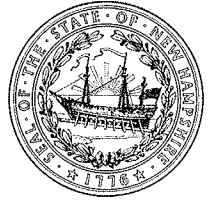




The State of New Hampshire
DEPARTMENT OF ENVIRONMENTAL SERVICES



Thomas S. Burack, Commissioner

August 15, 2013

Mr. Newton Tedder, US EPA - Region 1
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Subject: Comments on the February 12, 2013 New Hampshire Draft Small Municipal Separate Storm Sewer System NPDES General Permit

The Department of Environmental Services appreciates your thoughtful development of the most recent draft of the subject permit and your thorough response to comments. We thank you for reaching out to the regulated communities and spending the time and effort to assist us in interpreting the permit requirements. The permit's requirements are complicated and, as written, will need additional clarification. Although many of our questions have been answered, we would like to provide you with the following written comments on the permit requirements to assist us in working together to meet our joint water quality goals.

1. Given that DES programs are resource-constrained and likely to experience additional funding reductions, DES is concerned that the subject permit creates an additional workload for DES programs that is non-productive. For example, DES has an effective program to deal with antidegradation, but the very specific requirements in Section 2.1.2.b will likely result in DES needing to unnecessarily review every change in land use, regardless of how small (e.g., paving of a driveway), in every MS4 community. Section 2.1.2.b could simply read: "b. Permittees must comply with the provisions of the NH antidegradation provisions", allowing DES the flexibility to implement programs in the most effective way possible.
2. Section 2.2 is arguably the section of the draft permit that is most open-ended as far as community expense is concerned, particularly with the large number of impaired water listings and TMDLs in New Hampshire. Restoring impaired waters is as complicated and time-consuming as it is important, and TMDLs provide a valuable tool in their restoration. However, although MS4 communities can do their part, they cannot do it alone. Watershed-wide participation in integrated adaptive management approaches are necessary if water quality objectives are to be met. For the reasons below, DES suggests that EPA delay the effective date of Section 2.2 of the Permit for as long as 3 years after the date of signature and final release to the public. In addition, DES supports a longer time frame for the communities in New Hampshire to achieve compliance with the Permit. DES is committed to working with EPA and the New Hampshire legislature to modify administrative rules to enable the use of compliance schedules in general permits to allow for longer timeframes to meet the more challenging requirements of the permit. The permit should assure that the permittees take action to solve

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confirmed water quality problems but not put them in a position of immediate non-compliance, with no ability to comply within the permit term.

- a. As shown in the attached spreadsheet, prepared by DES to better understand the draft permit, most of the requirements are compressed into the first few years of the permit. Almost every requirement in the permit requires action within the first 6 – 12 months of the permit becoming effective. DES understands the importance of the new requirements in this draft. However, we also recognize the complexity, costs and practical realities associated with immediate implementation in the many relatively small communities in New Hampshire.
 - b. As discussed above, because of the large number of water bodies in New Hampshire with listings and TMDLs, including some for which additional and updated data are needed, the new requirements in Section 2.2 are magnified for the MS4 communities in New Hampshire. In the draft permit, DES would like to see the addition of a data verification step prior to the creation of water quality response plans or investments in more costly best management practices (BMPs). This is especially true for impaired waters for which there are few data, that have not been sampled in many years, or for which better sampling techniques are now available.
 - c. Further, for TMDL requirements and Water Quality Response Plans (WQRPs), it should be clear that the firm deadlines to conduct investigations and begin installing BMPs are only the first step in the “adaptive management” and “reasonable further progress” processes that may require several years beyond the permit term to complete. It would be helpful in moving this critical program forward if the Permit clarified if, and how, MS4 communities can stay in compliance with Permit requirements during the time the adaptive management approach to meeting water quality standards is being implemented.
 - d. Given the expansive nature of the permit, the number of listings and TMDLs in New Hampshire, other NPDES issues within MS4 communities, and resource issues, triage should be an important concept in the final permit. Communities should, with input from state and federal agencies, be able to prioritize water bodies for restoration and protection. While all surface waters are important, some characteristics, such as public health, recovery potential, and relative severity of impact, make certain waters higher priorities. It seems unusual that the Permit requirements for listed water bodies without TMDLs are more arduous than for those where TMDLs have already been developed. A prioritization step, perhaps even on a watershed basis, should be an important part of the implementation of section 2.2 and perhaps other sections requiring expensive monitoring or investigation. Ultimately, we look forward to discussing integrated permitting options that would allow all of us to focus on projects with the highest water quality benefit, particularly in watersheds with CSO discharges.
3. The requirements related to compliance with TMDLs are confusing. Permittees need to know exactly what they are responsible for to be in compliance. It should be made clear that permittees are only responsible for pollutants derived from human activities conducted within their own MS4 boundaries. For example, if CSOs in an upstream community are listed as the cause of

impairment in the 303(d) list, and a downstream community that does not have CSOs discharges to the same water body, then the downstream community should not need to take actions other than the 6 minimum control measures described in section 2.3. Further, it should be made clear that the only TMDL that requires "relative percent reductions" is that for phosphorus, and that for the other TMDLs, there are no specific allocations that apply at the outfalls. With regard to the phosphorus TMDLs, the permit seems to focus TMDL compliance on achieving phosphorus reduction targets. As stated in the implementation sections of the TMDLs, compliance with the TMDL will be based on compliance with water quality criteria and/or thresholds for the response parameters (i.e., dissolved oxygen, chlorophyll-a and cyanobacteria) and not on meeting the phosphorus reduction targets. In addition, the TMDL states that it is anticipated that the phosphorus reductions will be conducted in phases. To be consistent with how the phosphorus TMDLs were intended to be implemented, and to avoid spending public funds on BMPs that may not be necessary to achieve water quality standards, the permit should promote, and allow time for, an adaptive implementation approach consisting of phased BMP implementation followed by ambient monitoring after each phase, to confirm if additional phosphorus control measures are warranted.

4. It appears that Water Quality Response Plans (WQRPs) are open ended. There is a need for a Phase IV for WQRPs that defines when they can be closed out or suspended. It should be made clear that, except for periodic follow-up monitoring as part of the IDDE program, the water quality response plans can be suspended when the pollutants contributing to impairments are no longer present in significant or measurable quantities in an outfall. Further, if the listed impairments are removed from the 303(d) list due to ongoing monitoring of the applicable assessment unit by DES or the permittee, then the WQRPs can be closed out.

Thank you for giving us the opportunity to work with you on this critical issue. It is our hope that the new MS4 permit will serve to move all parties toward our mutual goal of meeting water quality objectives in the most effective and efficient ways possible. Please feel free to contact Vicki Quiram, Harry Stewart, Ted Diers or me if you have any questions.

Respectfully,



Thomas S. Burack
Commissioner

cc: Vicki Quiram, Assistant Commissioner, Dept. of Environmental Services
Harry Stewart, Director, Water Division, Dept. of Environmental Services
Ted Diers, Administrator, Watershed Management Bureau, Water Division, Dept. of Environmental Services

Attachment